

CHAPTER SIX

*Conjugality and Hindu  
Nationalism*

*Resisting Colonial Reason and the  
Death of a Child-Wife*

At the risk of provoking startled disbelief, I propose to place ideas about Hindu conjugality at the very heart of militant nationalism in Bengal.<sup>1</sup> Historians have seen the centrality of debates around colonial laws relating to women and marriage in the discourse of liberal reformers. Thus far, however, they have not located these themes within early Hindu nationalism.

I will examine three interlocking themes in this chapter. First, I believe that in the last four decades of the nineteenth century a fairly distinct political formation had emerged, which could loosely be called revivalist-nationalist. This was a mixed group of newspaper proprietors, orthodox urban estate-holders of considerable civic importance within Calcutta, and pandits as well as modern intellectuals whom they patronised. Such people used an explicitly nationalist rhetoric against any form

<sup>1</sup>I use the term 'militant nationalism' in a somewhat unconventional sense here: not as a part of a definite and continuous historical trend but as a moment of absolute and violent criticism of foreign rule that was developed by a group of Hindus in the late 1880s and early 1890s, largely over Hindu marriage controversies. Certain newspapers, especially the *Bangabashi*, took the lead in mobilising protest, organising mass rallies, and provoking official prosecution. That particular group, however, soon withdrew from the scene of confrontation. In the Swadeshi Movement of 1905–8, the *Bangabashi* would remain quiescent, even loyal to the authorities. I owe this piece of information to Sumit Sarkar. For an excellent study of the newspaper, see Amiya Sen, 'Hindu Revivalism in Bengal' (Ph.D. thesis, Delhi University, 1980).

of colonial intervention within the Hindu domestic sphere. Their rhetoric marked them off from the broader category of revivalist thinkers who did not necessarily oppose reformism in the name of resisting colonial knowledge. At the same time, the revivalist-nationalist group's commitment to an unreformed Hindu way of life separated them from liberal nationalists of the Indian Association and Indian National Congress variety. Needless to say, the groups spoken of here were not *irrevocably* distinct or mutually exclusive. Yet, despite the overlaps, there was clearly a distinctive political formation of nationalists who contributed to the emerging nationalism a highly militant agitational rhetoric and mobilising techniques that were built around a defence of Hindu patriarchy.

The second theme involves exploring why the revivalist-nationalists chose to tie their nationalism to issues of conjugality, which they defined as a system of non-consensual, indissoluble, infant marriage.

And, finally, in relation to the third theme, we need to dwell upon the arguments they fabricated. We find that the age of consent issue forced a decisive break in their discourse. It made it imperative for revivalist-nationalists to shift to an entirely different terrain of arguments and images, moving from the realm of reason and pleasure to that of discipline and pain. My elaboration of these themes is intended to widen the context of early nationalist agitations and provide them with an unfamiliar genealogy.

A few words are necessary to explain why, in the present juncture of cultural studies on colonial India, it is important to retrieve this specific history of revivalist-nationalism, and to work with a concept of nationalism that incorporates this history. Edward Said's *Orientalism* has fathered a received wisdom on colonial studies that has proved to be as narrow and frozen in its scope as it has been powerful in its impact. Said's work proceeds from a conviction about the totalising nature of a Western power-knowledge which gives to the entire Orient a single image with absolute certainty. Writings of the Subaltern Studies pundits and of a group of feminists, largely located in first-world academia, have come to identify this singular structure of colonial knowledge as the originary moment for all possible kinds of power and disciplinary formations. Going hand in hand with 'Orientalism', this concept is seen by such academics to reserve for itself the whole

range of hegemonic capabilities. This unproblematic and unhistoricised 'transfer of power' to structures of colonial knowledge has three major consequences: first, it constructs a monolithic, unstratified colonised subject who is powerless and without an effective or operative history of his/her own. The only history that she is capable of generating is 'derivative'. As a result, the colonised subject is absolved of all complicity and culpability in the makings of structures of exploitation over the last two hundred years of Indian colonial history: the subject's only culpability lies in the surrender to colonial knowledge. As a result, the lone political agenda for a historiography of this period shrinks into native contestations of colonial knowledge—since all power supposedly flows from this single source. Every species of contestation, by the same token, is taken to be equally valid. Today, with the triumphalist growth of aggressively communal and/or fundamentalist identity politics in our country, such a position comes close to indigenism. In fact it comes close to being intellectually Fascist in its authoritarian insistence on the purity of indigenous epistemological and autarkic conditions.

The Saidian magic formula has weird implications for the feminist agenda as well. The assumption that colonialism had wiped out all past histories of patriarchal domination, replacing them neatly and exclusively with Western forms of gender relations, has naturally led on to an exclusive identification of patriarchy in modern India with the project of liberal reform. While liberalism is made to stand in as the only vehicle of patriarchal ideology (since it is complicit with Western knowledge), its opponents—the revivalists and the orthodoxy—are vested with a rebellious, even emancipatory agenda, since they prevented colonisation of the domestic ideology. And since, for such academics, colonised knowledge is regarded as the exclusive source of all power, all that contests it is supposed to possess an emancipatory possibility for women. By easy degrees, then, we reach the position that while opposition to widow immolation was complicit with the colonial silencing of non-colonised voices and, consequently, was an exercise of power, the practice of widow immolation itself was a contestatory act outside the realm of power relations since it was not sanctioned by colonialism. In a country where people will still gather in their lakhs to watch and celebrate the burning of a teen-aged

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girl as sati, such cultural studies are grim with political implications.

It is apparent that colonial structures of power compromised with—and indeed learnt much from—indigenous patriarchy and upper-caste norms and practices which, in certain areas of life, retained considerable hegemony. This indubitable fact opens out a new context against which to reevaluate liberal reform. Above all, we need to remember that other sources of hegemony, far from becoming extinct, were reactivated under colonialism and opposed the liberal-rationalist agenda with considerable vigour and success. The historian cannot view the colonial past as an unproblematic arena within which all power was on one side and all protest on the other. It is necessary to take into account a multi-faceted nationalism (and not simply its liberal variant), all aspects of which were complicit with power and domination even when they critiqued Western knowledge and challenged colonial power.

## II

A summary of controversial legislative activity pertaining to Hindu marriage in the late nineteenth century will help map our discursive field. The Native Marriage Act III of 1872 was, for its times, an extremely radical package which prohibited polygamy, legalised divorce and laid down a fairly high minimum age of marriage. It also ruled out caste or religious barriers to marriage. Predictably, the proposed bill raised a storm of controversy. Its jurisdiction was eventually narrowed down to such people as would declare themselves to be not Hindus, not Christians, not Jains, not Buddhists and not Sikhs. In short, its scope came to cover the Brahmos alone, whose initiative had led to its inception in the first place.<sup>2</sup>

Furious debates around the bill opened up and problematised crucial areas of Hindu conjugality—in particular the system of non-consensual, indissoluble infant marriage whose ties were considered to remain binding upon women even after the death of their husbands. This polemic hardened in 1887 when Rukma Bai, an educated girl from

<sup>2</sup>Charles H. Heimsath, *Indian Nationalism and Hindu Social Reform* (Princeton: Princeton University Press, 1977), pp. 91–4; Ajit Kumar Chakraborti, *Maharshi Debendranath Tagore* (Allahabad, 1916; Calcutta, 1971), pp. 406–35.

the lowly carpenter caste, refused to live with her uneducated, consumptive husband, claiming that since the marriage was contracted in her infancy it could be repudiated by her decision as an adult. She was threatened with imprisonment under Act XV of 1877 for non-restitution of conjugal rights. The threat was removed only after considerable reformist agitation and the personal intervention of Victoria.<sup>3</sup> The issue foregrounded very forcefully the problems of consent and indissolubility within Hindu marriage.<sup>4</sup>

In 1891 the Parsi reformer Malabari's campaign bore fruit in The Criminal Law Amendment Act 10 which revised Section 375 of the Penal Code of 1860, and raised the minimum age of consent for married and unmarried girls from ten to twelve.<sup>5</sup> Under the earlier penal code regulation a husband could legally cohabit with a wife who was ten years old. The revivalist Hindu intelligentsia of Bengal now claimed that the new act violated a fundamental ritual observance in the life-cycle of the Hindu householder—that is, the 'garbhadhan' ceremony, or the obligatory cohabitation between husband and wife which was meant to take place immediately after the wife reached puberty. Since puberty, in the hot climate of Bengal, was quite likely to occur before she was twelve, the new legislation meant that the ritual would no longer remain compulsory. If the wife reached puberty before attaining the age of consent, then obviously garbhadhan could not be performed. This in turn implied that the 'pinda', or ancestral offerings, served up by the sons of such marriages would become impure and that generations of ancestors would be starved of it. The argument provided the central ground for a highly organised mass campaign in Bengal. The first open mass-level anti-government protest in Calcutta and the official prosecution of a leading newspaper were its direct consequences.<sup>6</sup>

<sup>3</sup>The act of 1877 was a colonial intervention to tighten up the marriage bond which the Hindu orthodoxy strongly defended on the grounds that it coincided with and reinforced the true essence of Hindu conjugality.

<sup>4</sup>See Dagmar Engels, 'The Limits of Gender Ideology: Bengali Women, the Colonial State, and the Private Sphere, 1890–1930', *Women Studies, International Forum*, vol. 12, 1989.

<sup>5</sup>Heimsath, pp. 147–75.

<sup>6</sup>See extracts from *Bangabashi* and *Dainik O Samachar Chandrika* between 1889 and 1891 in *RNP*.

This summary might be taken to suggest, Cambridge School fashion,<sup>7</sup> that nationalist initiative was actually a mere reflex action, following mechanically upon the legal initiatives of the colonial state. This was far from being the case. Not only was colonial initiative itself generally a belated and forced surrender to Indian reformist pressure, Hindu revivalist reaction against both was ultimately constituted by a new political compulsion: it was coterminous with a recently acquired notion of the colonised self which arose out of the 1857 uprising, the post-Mutiny reprisals, Lyttonian discriminatory policies in the 1870s, and the Ilbert Bill racist agitations in the 1880s. These experiences collectively modified and cast into agonising doubt the earlier choice of loyalism that the Bengali intelligentsia had made, fairly unambiguously, in 1857. Our understanding of responses to colonial legislation can make only very limited and distorted sense unless they are located within this larger context.

Whereas early-nineteenth-century male liberal reformers had been deeply self-critical about the bondage of women within the household,<sup>8</sup> the satirised literary self-representation of the Bengali 'baboo' of later decades recounted a very different order of lapses for himself: his was a self that had lost its autonomy and now willingly hugged its chains. Rethinking about the burden of complicity with colonialism hammered out a reoriented self-critique as well as a heightened perception about the meaning of subjection. It is no accident that even the economic critiques of drain, deindustrialisation and poverty would come to be developed by the post-1860s generations.

With a gradual dissolution of faith in the progressive potential of colonialism, a dissolution that accompanied political self-doubt and the failure of indigenous economic enterprises,<sup>9</sup> there was also a disenchantment with the magical possibilities of Western education. Earlier reformers had been led to look hopefully at the public sphere

<sup>7</sup>For this version of Cambridge historiography on Indian nationalism, see Gallagher, Seal and Johnson, *Locality, Province and Nation* (Cambridge, 1973).

<sup>8</sup>I have discussed this in 'Hindu Household and Conjugality in Nineteenth-Century Bengal', paper read at the Women's Studies Centre, Jadavpur University, Calcutta, 1989.

<sup>9</sup>N.K. Sinha, *Economic History of Bengal* (Calcutta, n.d.), vol. 1.

as an arena for the test of manhood, of genuine self-improvement. But now, with activities shrinking into parasitic petty landlordism and tenure-holdings, or to mechanical chores within an oppressive and marginalised clerical existence, the bhadralok household increasingly resembled a solitary sphere of autonomy, a site of formal knowledge where—and only where—education would yield practical, manipulable, controllable results. The Permanent Settlement had generated a class of parasitic landlords with fixed revenue obligation whose passivity was reinforced by uninhibited control over their peasants' rent. The gap between a fixed sum of revenue and flexible rent procurement in a period of rising agricultural prices cushioned an existence of fairly comfortable tenure holding. The Rent Acts of 1859 and 1885, however, breached that security. Organised tenant resistance of the late nineteenth century led to heightened anxieties and uncertainties among the landed gentry. The household, consequently, became doubly precious and important as the only zone where autonomy and self-rule could be preserved.<sup>10</sup>

In the massive corpus of household management manuals that came to occupy a dominant place in the total volume of printed vernacular prose literature of these years, the household was likened to an enterprise to be administered, an army to be led, a state to be governed<sup>11</sup>—all metaphors rather poignantly derived from activities that excluded colonised Bengalis. Unlike Victorian middle-class situations, then, the family was not a refuge after work for the man. It was their real place of work. Whether in the Kalighat bazaar paintings<sup>12</sup> or in the Bengali

<sup>10</sup>See my Introduction within the present volume.

<sup>11</sup>See for instance Prasad Das Goswami, *Amader Samaj* (Serampore, 1896); Ishanchandra Basu, *Stri Diger Prati Upadesh* (Calcutta, n.d.); Kamakhya Charan Bannerji, *Stri Shiksha* (Dacca, 1901); Monomohan Basu, *Hindur Achar Vyavdhar* (Calcutta, 1872); Chandranath Basu, *Garhasthya Path* (Calcutta, 1887); Bhubaneswar Misra, *Hindu Vivaha Samalochan* (Calcutta, 1875); Tarakhnath Biswas, *Bangiya Mahila* (Calcutta, 1886); Anubicacharan Gupta, *Grihastha Jivan* (Calcutta, 1887); Narayan Roy, *Bangamahila* (Calcutta, n.d.); Chandrakumar Bhattacharya, *Bangavivaha* (Calcutta, 1881); Pratapchandra Majumdar, *Stri Charitra* (Calcutta, n.d.); Purnachandra Gupta, *Bangali Bau* (Calcutta, 1885); and many others.

<sup>12</sup>See the preponderance of this theme in the collection of W.C. Archer, *Bazaar Paintings of Calcutta* (London, 1953).

fiction of the nineteenth century, workplace situations remain shadowy, unsubstantial, mostly absent. Domestic relations alone constitute the axis around which plots are generated, in sharp contrast with, for example, Dickensian novels.<sup>13</sup>

The new nationalist worldview, then, reimaged the family as a contrast to and a critique of alien rule. This was done primarily by contrasting two different versions of subjection—that of the colonised Hindu male in the world outside, and that of the apparently subordinated Hindu wife at home. The forced surrender and real dispossession of the former was counterposed to the allegedly loving, willed surrender and ultimate self-fulfilment of the latter.<sup>14</sup> It was in the interests of this intended contrast that conjugality was constituted as the centre of gravity around which the discursive field on the family organised itself. All other relations, even the mother-child one (which would come to take its place as a pivotal point in later nationalist discourse) remained subordinated to it up to the end of the nineteenth century. It was the relationship between the husband and wife that mediated and rephrased, within revivalist-nationalism, the political theme of domination and subordination, of subjection and resistance as the lyrical or existential problem of love, of equal but different ways of loving.

The household generally, and conjugality specifically, came to mean the last independent space left to the colonised Hindu. This was a conviction that was both shaped and reinforced by some of the premises of colonial law. English legislators and judges postulated a basic division within the legal domain: British and Anglo-Indian law had a 'territorial' scope and ruled over the 'public' world of land relations, criminal law, laws of contract, and evidence. On the other hand, there were Hindu and Muslim laws which were defined as 'personal', covering persons rather than areas, and ruling over the more intimate areas of human existence—family relationships, family property and religious life.<sup>15</sup>

<sup>13</sup>See, for instance, plots in the novels of Bankimchandra, *Bankim Rachanabali*, vol. I.

<sup>14</sup>Prasad Das Goswami, *op.cit.*

<sup>15</sup>See, for instance, Sir William Markby, Fellow, Balliol College and erstwhile judge in Calcutta High Court, *Hindu and Mohammedan Law* (1906; reprinted Delhi, 1977), pp. 2–3.

Early nationalists chose to read this as a gap between on the one hand the *territory* or the *land* colonised by an alien law, and on the other the *person*, still ruled by one's own faith. This was a distinction that the Queen's Proclamation of 1859, promising absolute non-interference in religious matters, did much to bolster.<sup>16</sup> Even in subjected India, therefore, there could exist an interior space that was as yet putatively inviolate.

Far from trying to hegemonise this sphere and absolutise its control, colonial rule, especially in the post-1857 decades, tried to keep its distance from it, thus indirectly adding to the nationalist conviction. The earlier zeal for textualisation and codification of traditional laws was gradually replaced by a recognition of the importance of unwritten and varied custom, of the inadvisability of legislation on such matters, and of urging judicial deference, even obedience, to local Hindu opinion.<sup>17</sup> Towards the end of the century, a strong body of Hindu lawyers and judges came to be formed whose conformity to Hindu practices (*Hindutva*) was often taken to be of decisive importance in judicial decision-making, even though their professional training was in Western jurisprudence, not in Hindu law.<sup>18</sup> There was, moreover, an implicit grey zone of unwritten law whose force was nevertheless quite substantial within law courts.<sup>19</sup> Take a Serampore court case of 1873, for instance, where a Hindu widow was suing her brothers-in-law for defrauding her of her share in her husband's property by falsely charging her with 'unchastity'. Her lawyer referred frequently to notions of kinship obligations, ritual expectations from a Hindu widow and moral norms and practices of high-caste women.<sup>20</sup> Clearly, these arguments

<sup>16</sup>See frequent reference to the Queen's Proclamation in the agitational writings in the nationalist press, *RNP*, 1887–91.

<sup>17</sup>Markby, *op.cit.*, for a convergence of the views of this Orientalist scholar-cum-colonial judge with Hindu legal opinion; and c.f. Sripati Roy, *Customs and Customary Law in British India*, Tagore Law Lectures, 1908–9 (reprinted Delhi, 1986), pp. 2–6.

<sup>18</sup>See J.D.N. Derrett, *Religion, Law and the State in India* (London, 1968).

<sup>19</sup>For a clarification of the notion of unwritten law, see Robert M. Ireland, 'The Libertine Must Die: Sexual Dishonour and the Unwritten Law in the 19th Century United States', *Journal of Social History*, Fall 1989.

<sup>20</sup>*The Bengalee*, 7 March 1873.

were thought to possess value in convincing the judge and the jury, even though overtly they had little legal significance. Far from laughing peculiarly Hindu susceptibilities out of court, English judges, even the Privy Council, seriously rationalised them. Referring to the existence of a Hindu idol as a legal person in a different law suit, an English judge commented: 'Nothing impossible or absurd in it . . . after all an idol is as much of a person as a corporation.'<sup>21</sup> Legal as well as ritual niceties about the proper disposition of idols were seriously debated, and sacred objects were brought into courts of law after due ritual purification of the space.<sup>22</sup> The introduction of a limited jury system between the 1860s and the 1880s in Bengal further strengthened the voice of local Hindu notables, and, consequently, of local usages and norms. An official recommendation of 1890 curtailed the powers of the jury in many directions but left the powers of settling marriage disputes intact in their hands.<sup>23</sup>

Nor did colonial legislators and judges form a unified, internally coherent body of opinion on proper Hindu norms and practices which they would then try to freeze. A substantial debate developed over a proposal in 1873 to transfer the cognisance of cases connected with marriage offences, especially adultery, from criminal to civil courts. While Simson, the Dacca commissioner, recommended the repeal of penal provisions against adultery, Reynolds, the magistrate of Mymensingh strongly demurred: 'I have always observed with great aversion the practice of the English law in giving damages in cases of adultery and seduction, and wanted it to remain a criminal offence.'<sup>24</sup> About cases of forfeiture of property rights by 'unchaste widows', there was a clear division between the high courts of Allahabad on the one hand and

those of Bombay, Madras and Calcutta on the other.<sup>25</sup> The divisions reflected the absence of any monolithic or absolute consensus about the excellence of English legal practice as a model for Indian life.

These decades had in England seen profound changes in women's rights *vis-à-vis* property holding, marriage, divorce, and the rights of prostitutes to physical privacy.<sup>26</sup> Englishmen in India were divided about the direction of these changes and a significant section felt disturbed by the limited, though real, gains made by contemporary English feminists. They turned with relief to the so-called relative stability and strictness of Hindu rules. The Hindu joint-family system, whose collective aspects supposedly fully submerged and subordinated individual rights and interests, was generally described with warm appreciation.<sup>27</sup> Found here was a system of relatively unquestioned patriarchal absolutism which promised a more comfortable state of affairs than what emerged after bitter struggles with Victorian feminism at home.

The colonial experience, in its own way, mediated and reoriented debates on conjugal legislation in England. There were important controversies: the best known being between John Stuart Mill and James Fitzjames Stephen on the issue of consensus *vs* force and authority as the valid basis for social and human relations. Stephen, drawing on his military-bureaucratic apprenticeship in India, questioned Mill's premise of complementarity and the notion of the companionate marriage.<sup>28</sup>

There was no stable legal or judicial model that could, therefore, be imported into India. Prior to the Judicature Act of 1873 there were four separate systems of courts in England, each applying its own form of law, and these were often in conflict with each other.<sup>29</sup> In any case,

<sup>25</sup>See extracts from *Murshidabad Patrika*, *Dacca Prakash* and the *Education Gazette* in April 1875, *RNP*.

<sup>26</sup>See Phillipa Levine, *Victorian Feminism, 1850-1900* (London, 1987), pp. 128-43. Also see Holcombe, *Wives and Property—Reform of the Married Women's Property Law in 19th Century England* (Oxford, 1983).

<sup>27</sup>Markby, *op.cit.*, p. 100.

<sup>28</sup>Mendus and Rendall (eds), *Sexuality and Subordination, Interdisciplinary Studies of Genders in the 19th Century* (London: RKP, 1989), p. 133.

<sup>29</sup>See also Holcombe, 'Victorian Wives and Property: Reform of the Married Women's Property Law, 1857-82' in Martha Vicinus, *A Widening Sphere: Changing Roles of Victorian Women* (London: Methuen, 1977).

<sup>21</sup>Markby, *op.cit.*, p. 100.

<sup>22</sup>This relates to a case involving the disposition of a Shalgram-shila in case of Surendranath Bannerjee *vs* the chief justice and judges of the High Court at Fort William, July 1883. See an account in Subrata Choudhary, 'Ten Celebrated Cases Tried by the Calcutta High Court' in the *High Court at Calcutta, Centenary Souvenir 1862-1962* (Calcutta, 1962).

<sup>23</sup>Sharmila Bannerjee, *Studies in the Administrative History of Bengal, 1880-1989* (New Delhi, 1978), pp. 151-5.

<sup>24</sup>Cited in *The Bengalee*, 26 April 1873.

the prolonged primacy of case-law and common-law procedures within England itself made English judges in India agree with Indian legal and nationalist opinion that customs, usages and precedents were far more valid sources of law than legislation.<sup>30</sup>

A general consensus about the differentiated nature of colonial law, then, postulated a fissure within the system wherein Hindus could insert their claims for a sectoral yet complete autonomy, for a pure space. The specific and concrete embodiment of this purity seemed to lie more within the body of the Hindu woman rather than the man—a conviction shaped, no doubt, by the growing self-doubt of the post-1857 Hindu male. Increasingly, irony and satire, a kind of black humour, became the dominant form of educated middle-class literary self-representation. There was an obsessive insistence on the physical manifestation of this weakness. The feeble Bengali male physique became a metaphor for a larger condition. Simultaneously, it was a site of the critique of the ravaging effects of colonial rule. 'The term Bengali is a synonym for a creature afflicted with inflammation of the liver, enlargement of the spleen, acidity or headache.'<sup>31</sup> Or, 'Their bones are weak, their muscles are flabby, their nerves toneless.'<sup>32</sup> Or, 'Bengal is ruined. There is not a single really healthy man in it. The digestive powers have been affected and we can eat but a little. Wherever one goes one sees a diseased people.'<sup>33</sup> Through the grind of Western education, office routine<sup>34</sup> and enforced urbanisation, with the loss of traditional sports and martial activities, the male Bengali body was supposedly marked, maimed and completely worn down by colonialism. It was the visible site of surrender and loss, of defeat and alien discipline.

The woman's body, on the other hand, was still held to be pure and unmarked, loyal, and subservient to the discipline of shastras alone. It was not a free body by any means, but one ruled by 'our' scriptures, 'our'

<sup>30</sup>Markby and Sripati Roy, *op.cit.*

<sup>31</sup>*The Amrita Bazar Patrika*, 4 February 1873.

<sup>32</sup>*The Hindoo Patriot*, 16 August, 1887.

<sup>33</sup>*The Amrita Bazar Patrika*, 28 January, 1875, RNP Bengal, 1875.

<sup>34</sup>See Sumit Sarkar, 'The Kalki-Avatar of Bikrampur: A Village Scandal in Early Twentieth-Century Bengal', in Ranajit Guha (ed.), *Subaltern Studies VI* (Delhi, 1989).

custom. The difference with the male body bestowed on it a redemptive, healing strength for the community as a whole. An interesting change now takes place in the representation of Hindu women in the new nationalist discourse. Whereas for liberal reformers she had been the archetypal victim figure, for nationalists she had become a repository of power, the Kali rampant, a figure of range and strength.<sup>35</sup>

What were the precise sources of grace for Hindu women? A unique capacity for bearing pain was one. So was the discipline exercised upon her body by the iron laws of absolute chastity, extending beyond the death of the husband, through an indissoluble, non-consensual infant form of marriage, through austere widowhood, and through her proven capacity for self-immolation. All these together imprinted an inexorable disciplinary regimen upon her person that contained and defined her from infancy to death.

Such discipline was not entirely confined to the normative or conceptual sphere. Bengal, with the exception of the Central Provinces and Berar, and Bihar and Orissa, had the highest rate of infant marriages—a custom that cut across caste and community lines and did not markedly decrease even after the Act of 1891.<sup>36</sup> Before it was banned, Bengal had also been, as we know, the heartland of the practice of sati. The Hindu woman's demonstrated capacity for accepting pain thus became the last hope of greatness for a doomed people. As we saw, Bankimchandra linked sati with national regeneration:

I can see the funeral pyre burning, the chaste wife sitting at the heart of the blazing flames, clasping the feet of her husband lovingly to her breasts. Slowly the fire spreads, destroying one part of her body and entering another. Her face is joyful . . . The flames burn higher, life departs and the body is burnt to ashes . . . When I think that only some time back our women could die like this, then new hope rises up in me, then I have faith that we, too, have the seeds of greatness within us. Women of Bengal: You are the true jewels of this country.<sup>37</sup>

<sup>35</sup>See 'Nationalist Iconography' in this volume.

<sup>36</sup>*Report of the Age of Consent Committee, 1928-29*, Government of Bengal (Calcutta, 1929). For some statistical observations on this matter, see pp. 65-6.

<sup>37</sup>*Kamalkanter Daptar*, *op.cit.*



Bankim had plenty of reservations on other aspects of Hindu conjugality,<sup>38</sup> but he seemed to identify with it at its most violent point of termination, through a highly sensualised spectacle of pain and death, a barely disguised parallel, as we have seen in the previous chapter, between the actual flames destroying a female body and the consuming fires of desire.

### III

There were two equally strong compulsions and possibilities in the construction of Hindu womanhood—love and pain—which produced deep anxieties within early nationalism.

The accent on love had, from the beginning, underlined acute discomfort about mutuality and equality. Pandit Sasadhar Tarkachuramani, the doyen of Hindu orthodoxy, argued that a higher form of love distinguished Western from Hindu marriages. While the former seeks social stability and order through control over sexual morality, the latter apparently aspires only towards 'the unification of two souls.' 'Mere temporal happiness, and the begetting of children are very minor and subordinate considerations in Hindu marriage.'<sup>39</sup> The revivalist-nationalist segment of the vernacular press, polemical tracts and manuals translated the notion of marriage of souls as mutual love lasting practically from cradle to funeral pyre. This uniquely Hindu way of loving supposedly anchored the woman's absolute and lifelong chastity.<sup>40</sup> Yet the very emphasis on love, so necessary as a critique of alien oppression and misunderstandings of the Hindu order, was a double-edged weapon: once it was raised, sooner or later the question of the

<sup>38</sup>Tanika Sarkar, 'Bankimchandra and the Impossibility of a Political Agenda' in this volume.

<sup>39</sup>*Bangabashi*, 9 July 1887, *RNP*, 1887. For a critical discussion of such views see Rabindranath Tagore, *Hindu Vivaha* (c. 1887). Rabindranath himself, in this extremely convoluted logical exercise, grants a practical purpose to infant marriage purely for better breeding purposes but, in the process, Hindu conjugality is denied all effective or spiritual pretensions. *Rabindranath Rachanabali*, vol. 12 (Calcutta, c. 1942).

<sup>40</sup>Chandrakanta Basu, *Hindu Patni and Hindu Vivaha Bayas O Uddeshya*, cited in *Hindu Vivaha*, op.cit., also by the same author, *Hindutva*, op.cit.

mutuality of such love was bound to arise. Was it equally binding on both partners? If not, and since Hindu males were allowed to be polygamous, could its jurisdiction on women be anything more than prescriptive? Particularly if marriage was imposed on her at birth, without the question of her consent or choice?

Nothing in the Hindu shastras would confirm the possibility of mutually monogamous ties. To redeem this absence there appeared, for the first time in the history of Hindu marriage, a wave of polemical literature that valorised, indeed insisted on, male monogamy: 'We find tracts that advise widowers never to remarry.'<sup>41</sup> Manuals advocating self-immolation for the adult widow now simultaneously advise that child widows should be remarried; they have no obligation towards a husband whom they have not, as yet, come to love.<sup>42</sup> Not just sacred texts but custom too now allows a wide spectrum of castes to make a second marriage possible for men if the first wife is barren or bore no sons.<sup>43</sup> Yet in the absence of a shastric or custom-based injunction against polygamy, and given the reluctance among Hindu revivalist-nationalists to invite reformist legislation, male chastity was fated to remain normative rather than obligatory, while the woman's chastity was not a function of choice or willed consent. This was a compromise that became fundamentally difficult to sustain.

Through much of the 1880s we find a studied silence on this uncomfortable equation within the Hindu marriage and a self-mesmerising repetition of its innately aesthetic qualities. The infant-marriage ritual is drenched in a warm, suffusing glow. 'People in this country take a great *pleasure* in infant-marriage. The *little bit* of a woman, the infant bride, clad in red silk, her back turned towards her boy husband . . . The drums are beating, and men, women and children are running in order to glimpse that face . . . from time to time she breaks forth into *little* ravishing smiles. She looks like a *little lovely* doll.'<sup>44</sup> (italics mine). The key words are little, lovely, ravishing, pleasure, infant,

<sup>41</sup>See for instance Prasad Das Goswami, op.cit., Bhubaneshwar Misra, op.cit., Kalimoy Ghatok, *Ami* (Calcutta, 1885).

<sup>42</sup>Monomohan Basu, op.cit.

<sup>43</sup>Ibid.

<sup>44</sup>*Sulabh Samachar O Kushadaha*, 22 July 1887, *RNP*, 1887.

and doll.<sup>45</sup> They are inserted at regular intervals to make the general account of festivities draw its warmth from this single major source—the delight-giving and delighted infant bride. The community of ‘men, women and children’ that forms for the occasion is bonded together by a deeply sensuous experience, by great visual pleasure, by happiness. The radiant picture of innocent celebration is rounded off through the cleverly casual insertion of the phrase ‘boy husband’. Yet infant marriage was prescriptive only for the girl. The groom of the ‘lovely doll’ could be, and frequently was, a mature, even elderly man, possibly much-married already. A strategic and organising silence lies at the heart of this image of desire and pleasure.

Even if the quality of Hindu love was assumed to be ‘higher’, Hindu marriage was still placed firmly within mainstream developments in the universal history of marriages which had supposedly trodden a uniform path from the ‘captive’ stage to fairly permanent, often sacramental, systems. Consent-based alternatives, whether in ancient Indian or in class-based modern Western traditions, were dismissed as aberrations or minor variations.<sup>46</sup> A long editorial, significantly entitled ‘The Bogus Science’, questioned the sources and authenticity of reformist knowledge: the nature of their evidence, of deduction, of arrangement of proof.<sup>47</sup> A powerful eugenics-based argument against infant marriage (infant marriages produce weak progeny) was countered by a climatic view of history:<sup>48</sup> irrespective of the age of the parents, a tropical climate was in any case bound to produce weak children: reformers were thereby accused of casuistry or weak logic. And since the penal code had earlier laid down ten as the minimum age of consent, how would raising it to twelve ensure genuine consent? ‘A girl of fourteen or sixteen is not

<sup>45</sup>Far from invariably evoking a sense of superiority and disgust among Englishmen, the spectacle would very often arouse similar sentiments. Compare a description of a marriage procession by an English tourist with our earlier account: ‘It was the prettiest sight in the world to see those gorgeously dressed babies . . . passerbys smiled and blessed the little husband and the tiny wife’; John Law, *Glimpses of Hidden India* (Calcutta, circa 1905).

<sup>46</sup>*The Hindoo Patriot*, 25 July 1887.

<sup>47</sup>*Ibid.*, 16 August 1887.

<sup>48</sup>*Ibid.*, 12 September 1887.

capable of legally signing a note of hand for 5 rupees and she is, *ipso facto*, a great deal more incompetent to give her consent to defile her person at twelve.’<sup>49</sup> It was also considered more than a little dishonest to place such importance on the woman’s consent in this one matter since, within post-marital offences, ‘in the case of the wife the point does not turn on consent, for, if that had been the case, there would have been no such offence as adultery in the Penal Code.’<sup>50</sup> A high premium was thus placed on the rule of rationality in the defence of Hindu marriage.

Hindu rationality was represented as more supportive than reformist or colonial projects. Given the physical and economic weakness of women, an indissoluble marriage tie had to be her only security. This contention conveniently overlooked the fact that, in a polygamous world, indissolubility was binding, in effect, on women alone. A clear-eyed kulin brahmin widow had remarked: ‘People say that the seven ties that bind the Hindu wife to the husband do not snap as they do with Christians or Muslims. This is not true. According to Hindu law, the wife cannot leave the husband but the husband may leave her whenever he wants to.’<sup>51</sup> It was also maintained that consent was immaterial since parents were better equipped to handle the vital question of security than an immature girl.<sup>52</sup> Security also largely depended upon perfect integration with the husband’s family, so the sooner the process began, the better it was for the girl.<sup>53</sup>

Hindu marriage, in the rather defensive discourse of the 1880s, then, was more pleasurable and more beautiful, kinder and safer, more rational, and guaranteed by a sounder system of knowledge. In any case, it was essentially a part of universal developments in the history of civilisations: differences in marriage systems between the Hindu and the non-Hindu were played down, if not obliterated.

The Rukma Bai episode of 1887 made it imperative at last to rewrite

<sup>49</sup>*Ibid.*, 1 August 1887.

<sup>50</sup>*Surabhi O Patrika*, 16 January 1887, *RNP*, 1887.

<sup>51</sup>Nistarini Devi, *Sekaler Katha*, first published serially in *Bharatbarsha* between 1913 and 1914. Jana and Sanyal (eds), *Atmakatha* (Calcutta, 1982), p. 11.

<sup>52</sup>Chandrakanta Basu, *op.cit.*

<sup>53</sup>*The Hindoo Patriot*, 19 September 1887.

this narrative of love and pleasure in the language of force. The earlier lyricism in relation to such 'love' had already been ruptured from time to time to underline and recuperate the basic fact of non-consensuality. At a meeting convened at the palace of the Shova Bazar Raj, Rajendralal Mitra had insisted: 'in it [Hindu marriage] there is no selection, no self-choice, no consent on the part of the bride. She is an article of gift, she is given away even as a cow or any other chattel.' Approving laughter greeted his exposition and he went on: 'There is in Hinduism not the remotest idea of choice and whoever changed any small part of it was no Hindu.'<sup>54</sup> Rukma Bai's action violently foregrounded the sexual double standards and made a mockery of the notion of the loving heart of Hindu conjugality. A lot of the debate centred around the vexed question of whether a woman could sue for separation from an adulterous husband. 'Among the Hindus, unchastity on the part of the husband is certainly a culpable offence but they set much higher value upon female chastity': its erosion would lead to the loss of family honour, growth of half-castes and the destruction of ancestral rites.<sup>55</sup> Bare, stark bones that formed the basic foundation of Hindu marriage now began to surface, threatening to blow the edifice of love away. 'A good Hindu wife should always serve her husband as God even if that husband is illiterate, devoid of good qualities and attached to other women. And it is the duty of the government to make Hindu women conform to the injunctions of the Shastras.'<sup>56</sup> The basis of conjugality now openly shifts to prescription.

Rukma Bai had forced a choice upon her community—between the woman's right to free will and the future of the pristine essence of Hindu marriage: the two could no longer be wedded together as a perfect whole. Revivalist-nationalists had to treat the two as separate, conflicting units, and indicate their own partisanship.

That came forth in no time at all. 'It is very strange that the whole of Hindu society will suffer for the sake of a very ordinary woman.'<sup>57</sup> Or, 'kindness to the female sex cannot be a good plea in favour of the

<sup>54</sup>Cited in *The Hindoo Patriot*, *ibid.*

<sup>55</sup>*Dainik O Samachar Chandrika*, 22 June 1857.

<sup>56</sup>*Bardhawan Sanjivani*, 5 July 1887, *RNP*, 1887.

<sup>57</sup>*Dhumkeru*, 4 July 1887, *RNP*, 1887.

proposed alteration.'<sup>58</sup> Interestingly, the episode had shown up another fault in the image of the Hindu community. Rukma Bai belonged to the carpenter caste, where divorce had been customary. Whose custom must colonial law recognise now? Was Hinduism a heterogeneous, indeed, self-divided, self-contradictory formation, or was it a unified monolithic one? The revivalist-nationalist answer, once again, was unambiguous. 'The Brahmin caste occupies the highest position and all laws and ordinances have been formed with special reference to that. All the other castes conduct themselves after the fashion of the Brahminical castes.'<sup>59</sup> Or, 'it is true that divorce obtains among some low-caste people and the government should be really doing an important duty as a ruler if it should make laws fixing and negotiating the uncertain and unsettled marriage customs of the people.'<sup>60</sup>

The debate prised open the imagined community along lines of caste and gender and delineated the specific contours of the revivalist-nationalist agenda. This could no longer base its hegemonic claims on its supposed leadership of the struggle of a whole subjected people for autonomy and self-rule in their 'private' lives. Its nationalism became more precisely defined now as the rule of brahmanical patriarchy. Its rationality was based on the forced and absolute domination of upper-caste, male standards, not universal reason leading towards freedom and self-determination for the dispossessed. If it aspired to detach Hindus from colonised reason and lead them to self-rule, it would only do so by substituting for it a brahmanical, patriarchal reason based on scripture-cum-custom, both of which were disciplinary and oppressive for the ruled subjects—as was the colonial regime in the sphere of political economy. The contestation of colonisation was no simple escape from or refusal of power: nor had colonialism equally and entirely disempowered all Indians. Resistance was an agenda itself irrevocably tied to schemes for domination, an exercise of power that was nearly as absolute as that which it resisted.

<sup>58</sup>*Sambad Prabhakar*, 30 June 1887, *RNP*, 1887.

<sup>59</sup>*Bangabashi*, 25 June 1887, *RNP*, 1887.

<sup>60</sup>*Nababibhakar Sadharani*, 18 July 1887, *RNP*, 1887.

## IV

Curiously, one possibility within Hindu marriage had not occurred to reformists or to Bengali Hindu militants—the possibility of the sexual abuse of infant wives. There had been, from time to time, the occasional stray report. The *Dacca Prakash* of June 1875 reported that an ‘elderly’ man had beaten his child wife to death when she refused to go to bed with him. Neighbours had tried to cover it up as suicide but the murder charge was eventually proved. The jury, however, let off the husband with a light sentence.<sup>61</sup> The *Education Gazette* of May 1873 had reported a similar incident when the ‘mature’ husband of a girl of eleven ‘dragged her out by the hair and beat her till he killed her’ for similar reasons. He was let off with a light sentence as well.<sup>62</sup> Reporting remained sporadic and the accounts were not picked up and woven into any general discussion about Hindu marriage as yet. The controversy over the right age of consent continued to hinge on eugenics, morality, child rearing and family interests.

In 1890 Phulmonee, a girl of about ten or eleven, was raped to death by her husband Hari Maiti, a man of thirty-five. Under existing penal code provisions, however, he was not guilty of rape since Phulmonee had been well within the statutory age limit of ten. The event, however, added enormous weight and urgency to Malabari’s campaign for raising the age of consent from ten to twelve. The reformist press began to systematically collect and publish accounts of similar incidents from all over the country. Forty-four women doctors brought out long lists of cases where child-wives had been maimed or killed because of rape.<sup>63</sup> From the possible effects of child marriage on the health of future generations, the debate shifted to the life and safety of Hindu wives.

Phulmonee was the daughter of the late Kunj Behari Maitee, a man from the ‘Oriya Kyast’ caste, who had been a ‘Bazar Sircar’ at Bow Bazar Market. It was a well-paid job and it seems that, by claiming ‘Oriya Kyast’ status, the family was aspiring to a superior caste position in consonance with their economic viability: Maitees were otherwise

<sup>61</sup>*Dacca Prakash*, 8 June 1875, *RNP*, 1875.

<sup>62</sup>*Education Gazette*, 11 May 1873, *RNP*, 1873.

<sup>63</sup>Heimsath, op.cit.

categorised as a low Sudra group. The family frequently referred to its specific caste practices in court with some pride. They said that while they adhered to child marriage, they forbade cohabitation before the girl’s menstruation and that, in this respect, Phulmonee had not come of age. Their version was that the newly-married couple had been kept apart according to caste rules, and that Hari, on a visit to his in-laws, had stolen into Phulmonee’s room and had forced himself upon her, thereby causing her death. Hari Maiti, however, insisted that since their marriage she had spent at least a fortnight at his house and they had slept together all the time. He made no mention of caste rules against pre-menstrual cohabitation. It seems, then, that caste customs remained loose and flexible, and that each family would allow considerable manipulation within them.

Even though Hari Maiti had insisted that on the last night they had not had intercourse, medical opinion was unanimous that the girl had died of violent sexual penetration. If the court accepted that Hari was right and that Phulmonee had slept with him earlier, then it could go a long way to show that since nothing untoward had happened earlier, on the fatal night in question Hari would not have had any reason to suspect that more vigorous penetration might lead to violent consequences. He would, in fact, have been able to seem convinced that intercourse was perfectly safe. The English judge, Wilson, clearly indicated that he chose to accept Hari’s version, thus exonerating him from the charge of culpable homicide. The charge of rape, in any case, was not permissible since the penal code provisions ruled out the existence of rape by the husband if the wife was above the age of ten. The judge was equally opposed to any extension of the strict letter of the law, in this case to devise exemplary punishment for a particularly horrible death: ‘Neither judges nor juries have any right to do for themselves what the law has not done.’

The judge built up his case on the hypothetical argument that the couple had slept together earlier. He chose to ignore the version given by the women in the girl’s family—of Radhamonee, Bhondamonee and Sonamonee, the mother, aunt and grandmother of the girl.

I think it is my duty to say that I think there exists hardly such solid and satisfactory ground as would make it safe to say that this man

must have had knowledge that he was likely to cause the death of the girl . . . You will, of course, in these, as in all matters, give the benefit of any doubt in favour of the prisoner.

The weight of concern is, very blatantly, on the exoneration of the man rather than on the fate of the woman. The law itself was shaped so as to preserve custom as well as the male right to the enjoyment of an infantile female body.

What needs to be particularly noted here is that, throughout the trial, the judge was saying nothing about a husband who insisted on sleeping with a child, or about the custom which allowed him to do so with impunity. Above all, he was not making any judgmental comparison between the ways of husbands, Eastern or Western. In fact, he bent over backwards to exonerate the system of marriage that had made this death possible: 'Under no system of law with which Courts have had to do in this country, whether Hindu or Mohammedan, or that formed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.'<sup>64</sup>

Both the Hindu husband and the Hindu marriage system are generously exempted from blame and criticism. There is, in fact, an assertion about a continuity in the spirit of the law from the time of the Hindu kingdoms to that of British rule.

A significant body of English medical opinion confirmed the clean bill of health that the colonial judiciary had advanced to the Hindu marriage system. Even in a strictly private communication, meant for colonial officialdom alone, the secretary to the Public Health Society wrote to the Government of Bengal:

The council direct me to lay special stress upon the point . . . that they base no charge against the native community.

They reverently cited the work on Hindu law by Sir Thomas Strange to evoke, in near-mystical terms, the supreme importance of his marriage

<sup>64</sup>Bengal Government Judicial J C/17/, Proceedings 96–102, 1892, Nos 101–02. File J C/17–5. Honourable Justice Wilson's charge to jury in the case *Empress vs Main Mohan Maitee*, Calcutta High Court. Report sent by Arcar, Clerk of the Crown, High Court, Calcutta, to Officiating Chief Secretary 90B, No. 6292–Calcutta, 8 September 1890.

rules to the Hindu, and the inadvisability of external interference with them.

The council admit that our native fellow subjects must be allowed the fullest possible freedom in deciding when their children should be ceremonially married. That, in the constitution of Hindu society, is a matter with which no Government could meddle and no Government ought to meddle.

They proceeded to review the considerable medico-legal data on sexual injuries inflicted on child wives and concluded that, whatever the weight of evidence on the matter, the system of infant marriage must continue unabated. The age of commencing cohabitation could be raised *only if Hindus themselves expressed a great desire for change* (emphasis mine).

Contrary to received wisdom, then, there is hardly here a vision of remaking the Hindu as a pale image of his master, nor of designs of total change and reform. Macaulay's notorious plan of recasting the native as a brown sahib was not necessarily uniformly dominant for the entire spectrum of colonial rule. Even when dominant, it had to make crucial negotiations with other imperatives and value preferences and, above all, with the everlasting calculations of political expediency. If, at the time of Macaulay, the Anglicist vision of a Westernised middle class had appeared as the strongest reservoir of loyalism, soon enough other alternatives emerged and were partially accommodated, modifying the earlier formula and crucially mitigating its reformist thrust. Our moment of the 1890s comes after a long spell of middle-class agitation over demands on constitutional rights, of Indianisation of the services, of security against racial discrimination and abuse. It comes after the outburst of white racism over the Ilbert Bill issue, when the educated middle class was temporarily vested with the possibility of standing in a position of judicial authority over Europeans. Empowering the Indian through Westernisation, consequently, came to be envisaged as the most threatening menace to colonial racial structures.<sup>65</sup> It was a moment when the slightest concession to Indian liberal reformism would be

<sup>65</sup>See Mrinalini Sinha, *Colonial Masculinity: The 'Manly Englishman' and the 'Effeminate Bengali' in the Late Nineteenth Century* (Manchester: Manchester University Press, 1995), pp. 33–69.

made most unwillingly and only in the belief that it represented a majority opinion.

The new legislation was conceived after the reformist agitation had convinced the authorities that the 'great majority' was ready for change.<sup>66</sup> After the Phulmonee episode, revivalist-nationalists were maintaining a somewhat embarrassed silence; this was broken only after the proposed bill came along. During the interval the reformist voice alone was audible. Since this, for the moment, looked like the majority demand, political expediency coincided temporarily with reformist impulse and the government committed itself to raising the age of consent. At the same time, official opinion in Bengal did not extend the terms of the specific reform to larger plans for invasive change. On the contrary, it displayed a keenness to learn from the codes of Hindu patriarchy. Did a recognition that they were confronted with the most absolute form of patriarchal domination evoke a measure of unconscious respect and fellow feeling among the usually conservative, male English authorities, rather than the instinct for reform? As the secretary to the Public Health Society put it: 'The history of British rule and the workings of British courts in India manifest a distinct tenderness towards . . . the customs and religious observances of the Indian people.'<sup>67</sup>

There was still the mangled body of 'that unhappy child, Phulmonee Dasee,' a girl of ten or eleven, sexually used by a man whom she had known only a few weeks, twenty-nine years her senior, a man who had already been married (aunt Bhondamonee's evidence in court). There was the deposition of her mother Radhamonee: 'I saw my daughter lying on the cot, weltering in blood. Her cloth and the bed cloth and Hari's cloth were wet with blood.'<sup>68</sup> There was unanimous medical opinion that Hari had caused the death of a girl whose body was still immature and could not sustain penetration. She died after thirteen hours of acute pain and continuous bleeding. The dry medi-

<sup>66</sup>Bengal Government Judicial NF J C/17/, Proceedings 104-17, June 1893. From Simmons, honorary secretary, Public Health Society of India to chief secretary, Government of Bengal, Calcutta, 1 September 1890.

<sup>67</sup>Ibid., C.C. Stevens, officiating chief secretary 90B, to secretary, home department, Government of India, Darjeeling, 8 November 1890.

<sup>68</sup>Letter from Simmons, op.cit.

cal terminology somehow accentuates the horror more than words of censure:

A clot, measuring 3 inches by one-and-a-half inches in the vagina . . . a longitudinal tear one and three quarters long by one inch broad at the upper end of the vagina . . . a haematoma three inches in diameter in the cellular tissue of the pelvis. Vagina, uterus and ovaries small and undeveloped. No sign of ovulation.<sup>69</sup>

Phulmonee's was by no means an isolated case. Dr Chever's investigations of 1856 mentioned at least fourteen cases of premenstrual cohabitation that had come to his notice, and the subsequent finding incorporated in Dr McLeod's report on child marriage amply corroborated his data.<sup>70</sup> We may presume that only such cases as would have needed police intervention or urgent medical attention entered the records. These were, then, cases of serious damage that resulted from premature sexual activity. An Indian doctor reported in court that 13 per cent of the maternity cases that he had handled involved mothers below the age of thirteen. The defence lawyer threw a challenge at the court: cohabiting with a pre-pubertal wife might not have shastric sanction, yet so deep-rooted was the custom that he wondered how many men present in court were not in some way complicit with the practice?<sup>71</sup>

The divisional commissioners of Dacca, Noakhali, Chittagong and Burdwan deposed that child marriage was widely prevalent among all castes, barring the tribals, in their divisions. The commissioner of Rajshahi division found that only in Jalpaiguri district 'Mechhes and other aboriginal tribes do not favour child marriage . . . amongst the Muhammadans and Rajbungshis, females being useful in field work, are not generally married until they are more advanced in age'. On the whole, the practice was more common among lower castes. The average age of marriage for upper-caste girls was slowly moving up to twelve or thirteen due to the relatively large spread of the new liberal education

<sup>69</sup>Bengal Government Judicial, J C/17/, op.cit.

<sup>70</sup>Ibid.

<sup>71</sup>McLeod's *Medical Report on Child Wives*, Bengal Government Judicial, ibid.

among them, and, ironically, to the growing pressures of dowry which forced parents to keep daughters unmarried till they could put together an adequate amount of dowry.<sup>72</sup> In fact, the compulsion to delay marriage till the dowry could be collected would have found a convenient ally in the new liberalism. Among the lower castes, on the other hand, emulation of brahmanical orthodoxy rather than of liberal values would be a more assured way of claiming pure ritual status. Wherever infant marriage prevailed, there was no way of ensuring that cohabitation would be delayed till the onset of puberty.

While both scriptural and customary injunctions were too strongly weighted in favour of early marriage to allow a raising of the age of marriage for girls, certain parts of the shastras did prescribe against pre-pubertal cohabitation among married couples. Nobinchandra Sen, poet and district magistrate of Chittagong, suggested that this injunction could be reinforced with legislation. Official opinion tried to distinguish between two distinct levels in marriage; the wedding ceremony itself was interpreted as a sort of a betrothal, after which girls remained in their parents' homes. It was only after the onset of puberty that they went through a 'second marriage' and went off to live with their husbands. A group of 'medical reformers' (Indian as well as European doctors who advocated changes in marriage rules on strictly medical grounds) as well as administrators advised legislation to ban marital cohabitation before the performance of the second marriage. They hoped that there was sufficient shastric as well as customary sanction behind the practice.<sup>73</sup>

It was soon clear, however, that too much was being made of the 'second marriage'. It was not generally taken to constitute a distinct separate stage within marriage as a whole. While there was widespread recognition that girls should begin regular cohabitation only after they attained puberty, the custom was customarily violated. Once the marriage had been performed, domestic (especially female), pressure pulled the wife into the husband's family. In any case, it was difficult to decide exactly at what age girls attained puberty or make sure that

<sup>72</sup>Ibid.

<sup>73</sup>Ibid.

no girl was sent off to her husband any earlier. Viable legislation would have to spell out a definite age at which puberty started rather than indicate a general physical condition.

The definition of puberty proved to be the stumbling block. According to custom, it was equated with the onset of regular menstruation. And here, revivalist-nationalists were treading delicate ground. While they wanted to oppose the proposed age of twelve, they could not push the age too far back, since they had not opposed the earlier penal code ban on marital cohabitation before the girl was ten. If they now chose to construe the earlier ban as an oppressive intrusion which had already interfered with Hindu marriage practices, then they could no longer sustain their present agitational rhetoric to the effect that the current intervention was the first fundamental violation of Hindu conjugality, and therefore spelt the beginning of the end of the only free space left to the Hindu. Without this sense of a new, momentous beginning of doom, the pitch of the highly apocalyptic rhetoric would fall flat. If the new legislation were to be seen as merely a part of a long-drawn-out process, then opposition to it could hardly invest itself with a life-or-death mission. They therefore insisted that 'true puberty' only occurred between the ages of ten and twelve. Even if menstruation occurred earlier, it was a fluke and not a regular flow. The earlier penal code regulation had not therefore interfered with the garbhadhan ceremony. Since, in the hot climate of Bengal, menarche was sure to start between ten and twelve, further raising the age of consent would constitute the first real breach in ritual practice.

Reformers argued that puberty sets in properly only after twelve. In this, they used a different notion of puberty. While revivalist-nationalists unequivocally equated puberty with menarche, medical reformers argued that puberty was a prolonged process and menarche was the sign of its commencement, not of its culmination. The beginning of menstruation did not indicate the girl's 'sexual maturity'—which meant that her physical organs were developed enough to sustain sexual penetration without serious pain or damage. Until that capability had been attained, they argued, the notion of her consent was meaningless.

It is remarkable how all strands of opinion—colonial, revivalist-nationalist, medical-reformer—agreed on a definition of consent that

pegged consent to a purely physical capability, divorced entirely from free choice of partner, from sexual, emotional or mental compatibility. Consent was put into a biological category, a stage when the female body was ready to accept sexual penetration without serious harm. The only problem lay in establishing when this stage was reached.

It would be simplistic, however, to conclude that there was complete identity of patriarchal values between reformers and revivalists. Whatever their broader views, reformers always had to struggle along with a minimalist programme since nothing else would have the remotest chance of acceptability either with the legislative authorities or in Hindu society. We only have to remind ourselves about the explosive protests that this legislation provoked. Reformist campaigning for legislation was more a consciousness-raising device, a foregrounding of issues of domestic ideology than pinning effective hopes of real social change to acts. Nor was the minimalist programme of insisting on the woman's physical safety an insignificant matter, under the circumstances. Revivalist-nationalists on the other hand, grounded their agenda on the most violently authoritarian regime of patriarchal absolutism. Their insistence upon self-rule in the domestic sphere coincided with their insistence that the Hindu girl should sacrifice her physical safety, and even her life if necessary, to defend the community's claim to autonomy.

As the reformist campaign gathered momentum and as the government, by the end of 1890, seemed committed to Malabari's proposals, Hindu militants were faced with two options. They could accept a radical reorientation of their earlier emphasis: that is, they could admit of a basic problem within present marriage practices and then separate them from past, supposedly authentic, norms. This way, they could still maintain their distance from reformers by insisting on reform from within in place of alien legislation from outside. While this would have amounted to an honourable face-saving device, it would still have implied an assault on the totality and inviolability of what had so far been exalted as the essential core of the system. Worse still, it would have amounted to a surrender to missionary, reformist and rationalist critiques of Hindu conjugality. On the other hand, it could come to terms with the phenomenon of violence and build its own counter-campaign around its presence. If difference was found to lie

not in superior rationality, greater humanism, pleasure or love, but rather in pain and coercion, then these constituents of difference should be admitted and celebrated.

## V

The Age of Consent Bill could have reasonably been faulted on many counts. It was an unbelievably messy and impractical measure. The reporting and verification of violations were generally impossible in familial situations. Even if the girl—provided she survived—and her parents were willing to depose against the husband, neighbours, whose evidence was crucial in such cases, usually protected the man. Proving the girl's age was fairly impossible in a country where births, even today, are not often registered. Medical examination was often inconclusive. Where matters did eventually reach the court, the jury, and British judges, fearful of offending custom, rarely took a firm stand. In 1891 the mother of a young girl had pressed for legal action in such a case and the girl herself gave very definite evidence in court. On the basis of a dental examination the English magistrate, however, could not be absolutely certain that she was not over twelve. The husband was consequently discharged.<sup>74</sup> Unnerved by the massive anti-bill agitations, the government hastened to undermine the scope of the act. Five days after its enactment, Lord Lansdowne sent circulars instructing that enquiries should be held by 'native Magistrates' alone, and in any case of doubt prosecution should be postponed.<sup>75</sup>

The nationalist press referred to these problems from time to time but used them as auxiliary arguments rather than as central ones. Certain other kinds of political criticism found a stronger resonance. There was a powerfully articulated fear about the extension of police intrusion right into the heart of the Hindu household.<sup>76</sup> There was also strong opposition on the grounds that an unreformed and unrepresentative legislature should not legislate on such controversial

<sup>74</sup>*The Bengalee*, 21 March 1891.

<sup>75</sup>Dagmar Engels, op.cit.

<sup>76</sup>*Surabhi O Patrika*, 16 January 1891, *RNP*, 1891.



matters<sup>77</sup>—a criticism that sought to link the anti-Bill agitation with (Moderate) Congress-type constitutional demands. These protests too remained rather marginal to the true core of the Hindu revivalist-nationalist debate, which was carried on by hardliners like the newspapers *Bangabashi*, *Dainik O Samachar Chandrika* and *The Amrita Bazar Patrika*.

Hindu nationalists started on a very familiar note that had been struck on all sorts of issues since the 1870s: a foreign government was irrevocably alien and immune to the meaning of Hindu practices. And where knowledge does not exist, there power must not be exercised. A somewhat long illustration from the *Dainik O Samachar Chandrika* sums up a number of typical statements on the matter.

That a woman should, from her childhood, remain near her husband, and think of her husband and should not even think of or see the face of another man . . . are injunctions of the Hindu Shastras, the significance whereof is understood only by 'sastvik' [pure] people like the Hindus. The English look to the purity of the body. But in Hindu opinion she alone is chaste and pure who has never even thought of one who is not her husband. No one who does not see with a Hindu's eye will be able to understand the secret meaning of Hindu practices and observances . . . . According to the Hindu the childhood of a girl is to be determined by reference to her first menses and not to her age . . .<sup>78</sup>

The first point made here is a methodological one that disputes the attempt to comprehend any foreign system of meaning through one's own cognitive categories (and immediately proceeds to do so itself by generalising on English attitudes about the body and the soul). The meaning of Hindu female childhood is then made different through a different arrangement of medical, sexual, moral and behavioural conditions. While revivalist-nationalists do not, as yet, insist on complete autonomy in the actual formulation and application of personal laws, they do claim the sole and ultimate right to determine their general field of operations. The claim is justified by breaking up and dispersing the sources of Hindu conjugality among numerous and ever-shifting

<sup>77</sup>*The Bengalee*, 21 March 1891.

<sup>78</sup>*Dainik O Samachar Chandrika*, 14 January 1891, *RNP*, 1891.

points of location. Some could be based on written texts, some located in oral traditions, yet others in ritual practice, and—most problematic of all—a whole lot could be simply embedded in an undefinable, amorphous, diffused Hindu way of life, accessible to Hindu instincts alone. The intention is to disperse the sources of Hindu law and custom beyond codified texts, however authoritative or authentic those might be. Even an ancient authority like Manu, who advocated sixteen as the upper limit of marriage age for girls, was dismissed as someone who wrote for the colder northern regions—where puberty came later. Charak and Susruta were dismissed even more summarily as near-Buddhists who had scant regard for true Hindu values. The process of wide dispersal renders Hindu customs opaque and infinitely flexible, to the point of being eternally elusive to colonial authorities.

The crucial emphasis lay in the reiteration that the proposed law was the first of its kind to breach and violate the fundamentals of Hinduism. The argument could only be clinched by derecognising the importance of earlier colonial interventions in Hindu domestic practices. Sati, it was argued, was never a compulsory ritual obligation and its abolition therefore merely scratched the surface of Hindu existence. The Widow Remarriage Act had a highly restricted scope, simply declaring children born of a second marriage to be legal heirs to their fathers' properties.<sup>79</sup> Reformers replied that the new bill was no unprecedented revision of custom either, since the penal code had already banned cohabitation for girls before the age of ten. Since girls could attain puberty before that age, the sanctity of the garbhadhan ceremony had already been threatened. Hindu revivalist-nationalists retaliated with a reference to the elusive sources of Hindu custom and a notion of the Hindu 'normalising' order which could be grasped by pure-born Hindus alone: 'It seems they [the reformers] do not know the meaning of *Adya Ritu* [real menses]. Mere flow of blood is no sign of *Adya Ritu*. A girl never menstruates before she is ten and even if she does the event must be considered unnatural.'<sup>80</sup> This took care of the 1860 Penal Code provision against cohabiting with a girl under ten. An 'authentic' Hindu girl,

<sup>79</sup>*Nabayug*, January 15, 1891, *RNP*, 1891.

<sup>80</sup>*Dainik O Samachar Chandrika*, 15 April 1896, *RNP*.

according to revivalists, does not reach puberty before she is ten. The earlier ban had therefore not really tampered with Hindu practices. Were the ceiling to be extended to twelve, a serious interference would occur. The meaning of physicality itself is constituted differently and uniform biological symptoms do not point to a universal bodily developmental scheme, since Hindus alone know what stands for the normal and the abnormal in the body's growth.

The insistence that the English were about to commit a primal sin against Hinduism, that an unprecedented attack was going to be mounted on the last pure space left to a conquered people, was necessary to relocate the beginnings of true colonisation here and now—so that a new chronology of resistance could also begin from this moment, redeeming the earlier choice of loyalism. 'The Indians have felt for the last two centuries that India is no longer theirs, that it has passed into the hands of the Yavanas. But the Indians have, up to this time, found solace in the thought that though their country is not theirs, their religion is theirs'.<sup>81</sup>

Or, even more forcefully and explicitly, 'No, no, a hundred battles like that of Plassey, Assay, Multan could not in terribleness of effect compare with the step Lord Lansdowne has taken'.<sup>82</sup> With the possibility of protest in the near future, apocalyptic descriptions of subjection became common: 'The day has at length arrived when dogs and jackals, hares and goats will have it all their way. India is going to be converted into a most unholy hell, swarming with hell worms and hell insects . . . The Hindu family is ruined'.<sup>83</sup>

It was this language of resistance and repudiation that gave the Age of Consent controversy such wide resonance among the Bengali middle class. The *Bangabashi*, in particular, formulated a rhetoric in these years with phenomenal success,<sup>84</sup> becoming in the process the leading Bengali daily, changing over from its weekly status, and pulling a whole lot of erstwhile reformist papers into its orbit for some time. Even Vidyasagar, the ideal-typical reformer figure, criticised the bill.<sup>85</sup>

<sup>81</sup> *Nabayug*, op.cit.

<sup>82</sup> *Bangabashi*, 21 March 1891, *RNP*, 1891.

<sup>83</sup> *Ibid.*

<sup>84</sup> See Amiya Sen, op.cit.

<sup>85</sup> Mentioned in *The Bengalee*, 7 March 1891.

The response of a fairly pro-reform journal, the *Bengalee*, epitomises the way in which the new agitational mood reacted on a potentially reform-minded, yet largely nationalist, intelligentsia. It had supported the bill quite staunchly up to the end of January 1891, after which there seemed to occur an abrupt change of line. In February, after reporting on 'an enormous mass protest meeting, the largest that had ever been held', it started to find problems with the legislation—albeit more of a constitutional kind, with reflections upon the unrepresentative nature of the legislature.<sup>86</sup> In March it covered yet another mammoth protest meeting and then redefined the grounds of its own opposition. 'It is no longer the language of appeal which opponents of the Bill address to the rulers of the land . . . However much we may differ from the opponents of the measure, we cannot but respect such sentiments'.<sup>87</sup>

We therefore turn to the 'language' of the opponents, to the *Bangabashi*. Here was a radical leap from mendicant appeals, from oblique and qualified criticism and from guilt and shame-ridden self-satirisation. Here was the birth of a powerful, self-confident nationalist rhetoric. 'Who would have thought that a dead body would rise up again? Whoever thought that millions of corpses would again become instinct with life?'<sup>88</sup> There was an exhilarating sense of release in the naming of the enemy.

The Englishman now stands before us in all his grim and naked hideousness. What a grim appearance. How dreadful the attitude . . . The demons of the cremation ground are laughing a wild, weird laugh. Is this the form of our Ruling power? Brahmaraksharh, Terror of the Universe; Englishmen . . . do you gnash your teeth, frown with your red eyes, laugh and yell, flinging aside your matted locks . . . and keeping time to the clang of the sword and bayonet . . . do you engage yourselves in a wild dance . . . and we . . . the twenty crores of Indians shall lose our fear and open our forty crores of eyes.<sup>89</sup>

Very confidently, almost gleefully, every former trapping of rationalisation was peeled away from the core message. Admittedly, sanction for

<sup>86</sup> *The Bengalee*, 28 February 1891.

<sup>87</sup> *Ibid.*, 21 March 1891.

<sup>88</sup> *Bangabashi*, 28 March 1891.

<sup>89</sup> *Ibid.*

infant marriage came from Raghunandan alone, who was a late and local authority. It might well lead to other deaths.<sup>90</sup> It did, in all likelihood, weaken future progeny and lead to racial degeneration; but 'the Hindu prizes his religion above his life and short-lived children'.<sup>91</sup> Hindu shastras undoubtedly imposed harsh suffering on women: 'This discipline is the pride and glory of chaste women and it prevails only in Hindu society'.<sup>92</sup> There were yet other practices that might bring on her death.

Fasting on *Ekadashi* [fortnightly fasting—without even a drink of water—to which widows are meant to ritually adhere] is a cruel custom and many weak-bodied widows very nearly die of observing it . . . it is prescribed only in a small 'tatwa' of Raghunandan. Is it to be banned, too, for this reason, and the guardian of the widow arraigned in front of the High Court and pronounced guilty by the Baboo jurors?<sup>93</sup>

There would be other Phulmonees who would die similar violent deaths through infant marriage. Yet:

the performance of the garbhadhan ceremony is obligatory upon all. Garbhadhan must be after first menstruation. It means the first cohabitation enjoined by the shastras. It is the injunction of the Hindu shastras that married girls must cohabit with their husbands on the first appearance of their menses and all Hindus must implicitly obey the injunction. And he is not a true Hindu who does not obey it . . . If one girl in a lakh or even a crore menstruates before the age of twelve it must be admitted that by raising the age of consent the ruler will be interfering with the religion of the Hindus. But everyone knows that hundreds of girls menstruate before the age of twelve. And garbhas [wombs] of hundreds of girls will be tainted and impure. And the thousands of children who will be born of those impure garbhas will become impure and lose their rights to offer 'pindas' [ancestral offerings].<sup>94</sup>

Even in translation the power of the voice comes through. The repetitive short sentences joined by 'ands', the frequency of the word 'must',

<sup>90</sup>*Dainik O Samachar Chandrika*, 15 January 1891.

<sup>91</sup>*Bangabashi*, 25 December 1890.

<sup>92</sup>*Dainik O Samachar Chandrika*, 14 January 1891.

<sup>93</sup>*Ibid.*, 11 January 1891.

<sup>94</sup>*Ibid.*

the use of vast and yet vaster numbers to build up inexorably towards a sense of infinite doom—all add up to an incantatory, mandatory, apocalyptic mode of speech that is the typical vehicle for a fundamentalist millennialism. All external reasoning has been chipped away, just the bare mandate is repeated and emphasised through threats and warnings. This is an immensely powerful, dignified voice, aeons away from timid mendicancy or morbid self-doubt. This is the proud voice of the community legislating on itself in total defiance of foreign rule and alien rationalism. It speaks the authoritative word in the appropriately authoritarian voice. The Hindu woman's body is the site of a struggle that for the first time declares war on the very fundamentals of an alien power-knowledge system. Yet it is not merely a displaced site for other arguments but remains, at this moment, the heart of the struggle. Bengali Hindu revivalist-nationalism, at this formative moment, begins its career by defining itself as the realm of unfreedom.

This contestation of alien reformism and rationalism, this defence of community custom, represses the pain of women whose protest was drowned to make way for a putative consensus. It is no longer possible to resurrect the protest of Phulmonee and of many, many other battered child-wives who died or nearly died as a result of marital rape. We have, however, several instances when cases were lodged at the initiative of the girl's mother, sometimes forcing the hands of the male guardians—for those times a rare demonstration of the woman's protest action. We also have a court deposition left by a young girl who was severely wounded and violated by her elderly husband.

'I cannot say how old I am. I have not reached puberty. I was sleeping when my husband seized my hand . . . I cried out. He stopped my mouth. I was insensible owing to his outrage on me. My husband violated me against my will . . . When I cried out he kicked me in the abdomen. My husband does not support me. He rebukes and beats me. I cannot live with him.'

The husband was discharged by the British magistrate. The girl was restored to him.<sup>95</sup>

<sup>95</sup>*The Bengalee*, 25 July 1891.